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PATRICK E. DUFFY
IN THE UNITED STATES DISTRICT COURT
DEPUTY CLERK
FOR THE DISTRICT OF MONTANA

HELENA DIVISION

STEPHEN HENDRICKS,)	CV 05-05-H-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
Defendant.)	
)	

United States Magistrate Judge Ostby entered Findings and Recommendations in this matter on August 18, 2005. Plaintiffs did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

This case concerns a Freedom of Information Act action where Plaintiff sought to enjoin the Federal Bureau of Investigation and the Department of Justice from withholding agency records

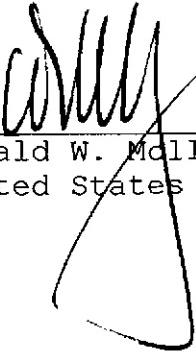
that Plaintiff had requested and to further compel production of records improperly withheld. Plaintiff filed a motion for partial summary judgment (dkt #8) and Defendant filed a motion for an *Open America Stay* (dkt #14). Judge Ostby ruled on those motions in her August 2005 Findings and Recommendations (dkt #23).

Judge Ostby granted Defendant's motion for stay but limited the stay until September 30, 2005 by which time she directed Defendant to comply with Plaintiff's requests and to furnish the Court with a status report confirming compliance. In light of her order concerning the stay, Judge Ostby recommended denying Plaintiff's motion for partial summary judgment as moot.

On September 30, 2005, Defendant filed a status report advising the Court that it complied with the Court's Order and responded to Plaintiff's Freedom of Information Act requests on September 29, 2005.

Accordingly, IT IS HEREBY ORDERED that Judge Ostby's Findings and Recommendations are adopted. Plaintiff's motion for partial summary judgment (dkt #8) is DENIED as moot.

DATED this 3rd day of February, 2006.



Donald W. Molloy, Chief Judge
United States District Court